

105TH CONGRESS
1ST SESSION

S. 1348

To provide for innovative strategies for achieving superior environmental performance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 1997

Mr. LIEBERMAN (for himself, Mr. DASCHLE, Mr. MOYNIHAN, and Mr. KERREY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide for innovative strategies for achieving superior environmental performance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Innovative Environ-
5 mental Strategies Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) superior environmental performance can be
9 achieved in some cases by granting regulated entities
10 the flexibility to develop innovative environmental

1 strategies for achieving environmental results in
2 partnership with affected stakeholders;

3 (2) innovative environmental strategies also
4 have the potential to—

5 (A) substantially reduce compliance costs;

6 (B) foster cooperative partnerships among
7 industry, government, public interest groups,
8 and local communities;

9 (C) encourage regulated entities to meet
10 and exceed environmental obligations through
11 greater innovation and greater pollution preven-
12 tion; and

13 (D) increase the involvement of members
14 of the local community and other citizens in de-
15 cisions relating to the environmental perform-
16 ance goals and priorities of a facility; and

17 (3) the lessons learned from successful innova-
18 tive environmental strategies should be incorporated
19 into the broader system of environmental regulation.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) ADMINISTRATOR.—The term “Adminis-
23 trator” means the Administrator of the Environ-
24 mental Protection Agency.

1 (2) AGENCY.—The term “agency” means the
2 Environmental Protection Agency.

3 (3) AGENCY RULE.—

4 (A) IN GENERAL.—The term “agency
5 rule” means a rule (as defined in section 551
6 of title 5, United States Code) promulgated by
7 the agency.

8 (B) EXCLUSIONS.—The term “agency
9 rule” does not include—

10 (i) an emissions reduction requirement
11 under title IV of the Clean Air Act (42
12 U.S.C. 7651 et seq.); or

13 (ii) a requirement under subtitle B of
14 the Emergency Planning and Community
15 Right to Know Act of 1986 (42 U.S.C.
16 11021 et seq.).

17 (4) PERSON.—The term “person” means an in-
18 dividual, trust, firm, joint stock company, corpora-
19 tion (including a government corporation), partner-
20 ship, association, State, Indian tribe, municipality,
21 commission, political subdivision of a State, inter-
22 state body, or department, agency, or instrumentality
23 of the United States.

1 **SEC. 4. INNOVATIVE ENVIRONMENTAL STRATEGY AGREE-**
2 **MENTS.**

3 (a) IN GENERAL.—

4 (1) PROPOSAL.—A person that owns or oper-
5 ates a facility that is subject to an agency rule, re-
6 quirement, policy, or practice may submit to the Ad-
7 ministrator a proposal for an innovative environ-
8 mental strategy for achieving better environmental
9 results.

10 (2) AGREEMENT.—If the Administrator finds
11 that the requirements of section 7 are met and ap-
12 proves the proposed strategy, the Administrator may
13 enter into an innovative environmental strategy
14 agreement with respect to the facility.

15 (3) CONTENTS.—An agreement under para-
16 graph (1)—

17 (A) may—

18 (i) modify or waive otherwise applica-
19 ble agency rules, requirements, policies, or
20 practices;

21 (ii) establish new environmental
22 standards for a facility; or

23 (iii) establish new requirements not
24 contained in existing agency rules or exist-
25 ing environmental statutes;

1 (B) may not contravene the specific terms
2 of a statute; and

3 (C) should further the purposes of applica-
4 ble environmental statutes.

5 (b) COSPONSOR.—

6 (1) IN GENERAL.—The Administrator shall es-
7 tablish procedures under which a person other than
8 the owner or operator of a facility may cosponsor a
9 proposal.

10 (2) PRIORITY.—The Administrator shall give
11 priority to proposals co-sponsored by a stakeholder
12 group.

13 **SEC. 5. SUBMISSION OF PROPOSAL.**

14 (a) CONTENTS OF PROPOSAL.—A proposal for an in-
15 novative environmental strategy shall be clearly and con-
16 cisely written and shall—

17 (1) identify any agency rule, requirement, pol-
18 icy, or practice for which a modification or waiver is
19 sought and any alternative requirement that is pro-
20 posed;

21 (2) describe the proposed innovative environ-
22 mental strategy and the facility to which the strat-
23 egy would pertain; and

1 (3) demonstrate the manner in which the inno-
2 vative environmental strategy is expected to meet the
3 requirements of section 7.

4 (b) PRELIMINARY REVIEW.—The Administrator shall
5 review the proposal and determine whether, in the Admin-
6 istrator’s sole discretion, the proposed strategy is suffi-
7 ciently promising that the Administrator is prepared to
8 enter into negotiations toward execution of an innovative
9 environmental strategy agreement.

10 (c) NOTIFICATION.—The Administrator shall notify
11 the proponent of a determination under subsection (b) not
12 later than 90 days after submission, unless the proponent
13 agrees to a longer review.

14 **SEC. 6. STAKEHOLDER PARTICIPATION PROCESS.**

15 (a) IN GENERAL.—The proponent of a proposal
16 under section 5 shall—

17 (1) upon approval of the proposal for negotia-
18 tion toward an agreement, undertake a stakeholder
19 participation process in accordance with this section;
20 and

21 (2) work to ensure that there is adequate inde-
22 pendent technical support for an effective stake-
23 holder process.

24 (b) DEVELOPMENT OF PROCESS.—

1 (1) IN GENERAL.—The stakeholder participa-
2 tion process shall be developed by the stakeholders
3 and the proponent, in consultation with the Adminis-
4 trator.

5 (2) REQUIREMENTS.—The stakeholder partici-
6 pation process shall—

7 (A) be balanced and representative of in-
8 terests that may be affected by the proposed
9 strategy;

10 (B) ensure opportunities for public access
11 to the process and make publicly available in a
12 timely manner the proceedings of the stake-
13 holder participation process, except with respect
14 to confidential business information;

15 (C) establish procedures for conducting the
16 stakeholder participation process, including
17 open meetings as appropriate;

18 (D) if necessary, provide for appropriate
19 agreements to protect confidential business in-
20 formation; and

21 (E) establish guidelines for the role of
22 stakeholders, individually and as a group or
23 subgroup, in the development of the strategy,
24 including whether the stakeholders have an ad-

1 visory, consultative, decisionmaking or veto role
2 with respect to the strategy.

3 (c) FACA.—A stakeholder process satisfying the re-
4 quirements of this section shall not be subject to the re-
5 quirements of the Federal Advisory Committee Act (5
6 U.S.C. App.).

7 (d) PUBLIC NOTICE OF APPLICATION.—After a pro-
8 posal is approved for negotiation toward an agreement, the
9 proponent shall provide public notice of the proposal in
10 a manner, approved by the Administrator, that is reason-
11 ably calculated to reach potentially interested parties in-
12 cluding—

13 (1) community groups;

14 (2) environmental groups;

15 (3) potentially affected employees;

16 (4) persons living near or working in or near
17 the affected facility; and

18 (5) relevant Federal, State, tribal, and local
19 agencies.

20 (e) PARTICIPATION.—

21 (1) IN GENERAL.—A person that, not later
22 than 60 days after the date on which public notice
23 is first given under subsection (c), notifies the pro-
24 ponent of the person's intention to participate in the
25 stakeholder participation process may participate in

1 the process, except that a person that has a business
2 interest in competition with that of the proponent
3 may be excluded.

4 (2) ADDITIONAL STAKEHOLDERS.—Additional
5 stakeholders may be added by the proponent, the
6 Administrator or the stakeholder group after the
7 stakeholder group is initially constituted in order to
8 ensure full representation of all potentially affected
9 interests throughout the process, including represen-
10 tation with respect to any new issues that may be
11 raised during the process, and to ensure that appro-
12 priate expert assistance is available for the stake-
13 holders.

14 (f) LIMITATION ON NUMBER OF PARTICIPANTS.—

15 (1) IN GENERAL.—In order to provide for a
16 manageable stakeholder process, the Administrator
17 may limit the number of stakeholder participants if
18 the Administrator determines that the stakeholder
19 participants adequately represent, in a balanced
20 manner, the full range of interests (excluding com-
21 petitive business interests) that may be affected by
22 the innovative environmental strategy.

23 (2) NOTICE.—Before approving a limit on the
24 number of stakeholder participants, the Adminis-
25 trator shall ensure that appropriate notice was pro-

1 vided to each of the groups identified in
2 subsection (d).

3 (3) **ADDITIONAL STAKEHOLDERS.**—Notwith-
4 standing any limit on the number of stakeholders
5 that may be approved, additional stakeholders may
6 be added to meet the requirements of subsection (e).

7 (g) **NEGOTIATION.**—After the stakeholder group has
8 been identified, and procedures for the stakeholder process
9 have been agreed on under subsection (b)(2)(E), the pro-
10 ponent, the stakeholders, and the Administrator shall ini-
11 tiate the process of negotiating toward an innovative envi-
12 ronmental strategy agreement.

13 **SEC. 7. REQUIREMENTS FOR APPROVAL.**

14 (a) **IN GENERAL.**—The Administrator may enter into
15 an innovative environmental strategy agreement if the Ad-
16 ministrator determines that—

17 (1) the strategy is expected to achieve better
18 environmental results (as determined under sub-
19 section (c));

20 (2) the strategy has potential value as a model
21 for future changes in the broader regulatory struc-
22 ture or as a demonstration of new technologies or
23 measures with potential for reducing pollution on a
24 broader scale;

1 (3) the strategy provides for access to informa-
2 tion adequate to enable verification of environmental
3 performance by any interested person;

4 (4) the strategy provides a means and level of
5 accountability, transparency, monitoring, reporting,
6 and public and agency access to information relating
7 to activities being carried out under an innovative
8 environmental strategy that is at least equivalent to
9 that provided under the agency rule, requirement,
10 policy, or practice that the agreement seeks to mod-
11 ify or waive, including reporting of the benchmarks
12 in the agreement;

13 (5) no person or populations would be subjected
14 to unjust or disproportionate adverse environmental
15 impacts as a result of implementation of the strat-
16 egy;

17 (6) the strategy will ensure worker health and
18 safety protections that are the same or superior to
19 those provided under existing law;

20 (7) the strategy is not expected to result in ad-
21 verse transport of a pollutant;

22 (8) any Federal, State, tribal, or local environ-
23 mental agencies required to be signatories under sec-
24 tion 8(c) are prepared to sign the agreement and the

1 consultation required under section 8(c)(3) has oc-
2 curred;

3 (9) the stakeholder participation process met
4 the requirements of section 6, and the stakeholders
5 have obtained adequate independent technical sup-
6 port for an effective process;

7 (10) there is broad community support for the
8 strategy, as shown by stakeholder support and other
9 relevant factors; and

10 (11) the strategy is expected to reduce regu-
11 latory burdens or provide other social or economic
12 benefits.

13 (b) OTHER CONSIDERATIONS.—In determining
14 whether to enter into an agreement, or to negotiate toward
15 an agreement, the Administrator shall consider—

16 (1) whether the facility has a strong record of
17 compliance with environmental and public health
18 regulations and whether the proponent has dem-
19 onstrated a strong commitment to achieve pollution
20 prevention with respect to the facility;

21 (2) the extent to which the strategy involves
22 new approaches to environmental protection and
23 multimedia pollution prevention;

1 (3) the extent to which there is a link between
2 the modification or waiver sought, the better envi-
3 ronmental results expected, and other benefits; and

4 (4) the feasibility of the strategy and the ability
5 of the proponent to carry out the strategy.

6 (c) BETTER ENVIRONMENTAL RESULTS.—

7 (1) EVALUATION.—The Administrator shall de-
8 termine whether a strategy is expected to achieve
9 better environmental results based on the magnitude
10 of reduction in the level of releases or improvement
11 in pollution prevention relative to each benchmark
12 established under paragraphs (4) through (7);

13 (2) OTHER CONSIDERATIONS.—In addition to
14 making the determination under paragraph (1), the
15 Administrator shall evaluate the extent to which the
16 strategy—

17 (A) results in environmental performance
18 more protective than the best performance prac-
19 tice of comparable facilities;

20 (B) relies on pollution prevention;

21 (C) incorporates continuous improvement
22 toward ambitious quantitative environmental
23 goals;

1 (D) produces clear reduction of risk, based
2 on a well-accepted analytical method acceptable
3 to the Administrator and the stakeholders;

4 (E) improves environmental conditions
5 that are priorities to stakeholders, including
6 conditions not regulated under statutes admin-
7 istered by the agency;

8 (F) reflects historic demonstration of lead-
9 ership in environmental performance of the fa-
10 cility;

11 (G) substantially addresses community and
12 public health priorities of concern to stakehold-
13 ers, including concerns not addressed under
14 statutes administered by the agency;

15 (H) addresses other factors that the Ad-
16 ministrator determines clearly improve environ-
17 mental performance in the context of a specific
18 strategy; and

19 (I) includes reductions in releases or im-
20 provement in pollution prevention in addition to
21 those considered by the Administrator for pur-
22 poses of paragraph (1).

23 (3) FINDINGS.—The Administrator shall pro-
24 vide findings setting forth the basis for the deter-
25 mination that the innovative environmental strategy

1 is expected to achieve better environmental results.
2 If the Administrator determines that the magnitude
3 of reduction in the level of releases or improvement
4 in pollution prevention would be a reduction or im-
5 provement, but not a significant reduction or im-
6 provement, the Administrator may approve a pro-
7 posal only if the Administrator determines that the
8 strategy is expected to result in a clear and substan-
9 tial improvement in environmental protection, con-
10 sidering the other factors in this subsection.

11 (4) BENCHMARK.—The benchmark for releases
12 of each pollutant into the air, water, or land shall
13 be as follows:

14 (A) EXISTING FACILITIES.—For existing
15 facilities, the benchmark shall be the lesser of—

16 (i) the level of releases of each pollut-
17 ant into the air, water, or land being
18 achieved before the date of submission of
19 the proposal; or

20 (ii) the level of releases of each pollut-
21 ant into the air, water, or land allowed
22 under applicable regulatory requirements
23 and any reasonably anticipated future reg-
24 ulatory requirements;

1 except that the Administrator may, based on
2 extraordinary site-specific circumstances, mod-
3 ify the level under subparagraph (A)(i) on a
4 case by case basis for a facility that has re-
5 duced releases significantly below applicable
6 regulatory requirements before the date of sub-
7 mission of the proposal.

8 (B) NEW OR MODIFIED FACILITIES.—For
9 new or significantly expanded facilities, the
10 benchmark shall be based on the lesser of—

11 (i) the level of releases of each pollut-
12 ant into the air, water, or land allowed
13 under applicable regulatory requirements
14 and any reasonably anticipated future reg-
15 ulatory requirements; or

16 (ii) the level of releases of each pollut-
17 ant into the air, water, or land based on
18 best industry practices.

19 (5) POLLUTION PREVENTION.—

20 (A) NO RELEASE OF A POLLUTANT.—In
21 appropriate circumstances not involving release
22 of a pollutant, the Administrator may establish
23 a pollution prevention benchmark to evaluate
24 changes in inputs to production of materials or

1 substances of potential environmental or public
2 health concern.

3 (B) RELEASE OF A POLLUTANT.—In cir-
4 cumstances involving a release of a pollutant,
5 the Administrator may establish a pollution
6 prevention benchmark in addition to the bench-
7 mark under paragraph (4).

8 (6) BASIS OF MEASUREMENT.—A benchmark
9 may be established on the basis of total emissions,
10 on a per-unit of production basis, or on a com-
11 parable basis of measurement, as determined by the
12 Administrator.

13 (7) OTHER CONSIDERATIONS.—The Adminis-
14 trator may determine that the requirements of this
15 section are met if a benchmark is not met, if—

16 (A) with respect to other benchmarks, the
17 strategy achieves a significant increment of re-
18 duced level of releases below that permitted by
19 the benchmark;

20 (B) the strategy, based on a well-estab-
21 lished analytic methodology acceptable to the
22 Administrator and the stakeholders—

23 (i) is expected to achieve overall better
24 environmental results with an adequate
25 margin of safety;

1 (ii) is not expected to result in an in-
2 crease in the risk of adverse effects, or
3 shift the risk of adverse effects, to the
4 health of an individual, population, or nat-
5 ural resource affected by the strategy; and

6 (iii) is expected to achieve clear risk
7 reduction; and

8 (C) the strategy is not expected to result
9 in an exceedance of an ecological, health, or
10 risk-based environmental standard.

11 (d) VIEWS OF STAKEHOLDERS.—

12 (1) IN GENERAL.—The Administrator shall give
13 great weight to the views of individual stakeholders
14 and to the stakeholders as a group in determining
15 whether to approve or disapprove a strategy.

16 (2) STAKEHOLDERS WITH DECISIONMAKING
17 ROLE.—The Administrator shall deny a proposal
18 if—

19 (A) the stakeholder group and the pro-
20 ponent have determined under section 6 that
21 the group, any subgroup, or 1 or more individ-
22 ual stakeholders in the group will have the abil-
23 ity to veto a decision by the proponent to go
24 forward with the strategy;

1 (B) the group or 1 or more stakeholders
2 objects to the strategy; and

3 (C) the Administrator determines that the
4 objection relates to the criteria stated in section
5 7 and that the objection has a clear and reason-
6 able foundation.

7 **SEC. 8. FINAL DETERMINATION ON AGREEMENT.**

8 (a) PROPOSAL.—

9 (1) IN GENERAL.—Not later than 180 days
10 after the date on which negotiations are initiated
11 under section 6(g) or such later date as may be
12 agreed to by the proponent and the stakeholders, the
13 Administrator shall—

14 (A) provide public notice and opportunity
15 to comment on a proposed innovative environ-
16 mental strategy agreement; or

17 (B) notify the proponent and the stake-
18 holder group that the Administrator does not
19 intend to enter into an agreement.

20 (2) FORM OF NOTICE.—Public notice under
21 paragraph (1) shall be provided by—

22 (A) publishing a notice in the Federal Reg-
23 ister; and

1 (B) providing public notice to persons po-
2 tentially interested in the strategy in the man-
3 ner described in section 6(d).

4 (3) COMMENT PERIOD.—The public comment
5 period shall be not less than 30 days, and shall be
6 extended by an additional 30 days if an extension is
7 requested by any person not later than 15 days after
8 the beginning of the public comment period.

9 (b) FINAL DECISION.—

10 (1) IN GENERAL.—Not later than 60 days after
11 the end of the public comment period, the Adminis-
12 trator shall determine whether to enter into an
13 agreement, and shall give notice of the determina-
14 tion in the same manner as notice was given of the
15 proposed agreement.

16 (2) RESPONSE.—The Administrator—

17 (A) shall respond to comments received;
18 and

19 (B) may modify the agreement in response
20 to the comments.

21 (c) SIGNATORIES.—

22 (1) IN GENERAL.—The parties to an innovative
23 environmental strategy agreement—

24 (A) shall include the Administrator, the
25 proponent, and any Federal, State, or local

1 agency or Indian tribe with jurisdiction over the
2 subject matter of the agreement under this Act;
3 and

4 (B) may include a stakeholder.

5 (2) JOINT RULES REQUIREMENTS AND POLI-
6 CIES.—If an agreement waives or modifies a rule,
7 requirement, or policy issued by the agency jointly
8 with another Federal agency, the other Federal
9 agency shall be a signatory to the agreement.

10 (3) CONSULTATION.—The Administrator shall
11 consult with and consider the views of any Federal
12 agency with management responsibility or regulatory
13 or enforcement authority over land or natural re-
14 sources that may be affected by the strategy.

15 **SEC. 9. STATE ROLE.**

16 (a) IN GENERAL.—If a proposed strategy involves
17 waiving or modifying requirements imposed under State,
18 tribal, or local law, the Administrator shall not approve
19 an agreement unless procedures required under those laws
20 for such waiver or modification are followed in addition
21 to the execution of the innovative environmental strategy
22 agreement.

23 (b) PART OF FEDERAL PROGRAM.—If a proposed
24 strategy involves waiving or modifying requirements of
25 State, tribal, or local law that are part of an authorized

1 or delegated Federal program, execution of an innovative
2 environmental strategy agreement by the Administrator
3 and by the State, Indian tribe, or local government shall
4 be deemed to provide authorization or approval of the pro-
5 gram as modified by the agreement.

6 **SEC. 10. ENFORCEABILITY.**

7 (a) SPECIFICATION OF ENFORCEABLE PROVI-
8 SIONS.—

9 (1) DEFINITION OF VOLUNTARY COMMIT-
10 MENT.—In this section, the term “voluntary com-
11 mitment” means a commitment that the parties to
12 the agreement consider to be a necessary part of the
13 strategy but is not enforceable under this section.

14 (2) INCLUSION IN AGREEMENT.—An innovative
15 environmental strategy agreement shall include en-
16 forceable requirements and may include voluntary
17 commitments.

18 (3) ENFORCEABLE REQUIREMENTS.—

19 (A) IDENTIFICATION.—Enforceable re-
20 quirements shall be clearly identified and distin-
21 guished in the agreement from voluntary com-
22 mitments.

23 (B) INCLUSION OF ALL NECESSARY AC-
24 TIONS.—In all cases, enforceable requirements
25 shall include, at a minimum, all actions nec-

1 essary to achieve better environmental results
2 relied upon by the Administrator for purposes
3 of section 7(c)(1), and all accountability, mon-
4 itoring, reporting, and public and agency access
5 requirements mandated by paragraphs (3) and
6 (4) of section 7(a).

7 (4) VOLUNTARY COMMITMENTS.—Failure to
8 implement a voluntary commitment may constitute a
9 ground for termination of the agreement.

10 (b) TREATMENT OF AGREEMENT AS PERMIT, CONDI-
11 TION, OR REQUIREMENT.—

12 (1) DEFINITION OF OTHERWISE APPLICABLE
13 REQUIREMENT.—In this subsection, the term “oth-
14 erwise-applicable requirement” means a rule, permit,
15 condition, policy, practice, or other requirement that
16 an innovative environmental strategy agreement
17 modifies, waives, or replaces.

18 (2) IDENTIFICATION OF ENFORCEABLE RE-
19 QUIREMENTS.—An innovative environmental strat-
20 egy agreement shall state in a separate section des-
21 ignated “Enforceable Requirements” all of the en-
22 forceable requirements of the agreement.

23 (3) IDENTIFICATION OF MODIFIED, OTHERWISE
24 WAIVED OR RELOCATED REQUIREMENTS.—An inno-
25 vative environmental strategy agreement shall iden-

1 tify (including citation to the specific provision of a
2 statute or rule), with respect to each enforceable re-
3 quirement, each otherwise-applicable requirement
4 that the agreement waives, modifies, or replaces.

5 (4) TREATMENT.—Each enforceable require-
6 ment shall be deemed, for purposes of enforcement,
7 to be a permit issued under, a condition imposed by,
8 or a requirement of the statute or rule under which
9 the otherwise-applicable requirement that the agree-
10 ment modifies, waives, or replaces was imposed.

11 (5) ENFORCEABILITY.—Each enforceable re-
12 quirement shall be enforceable in the same manner
13 and to the same extent (by the United States, by a
14 State or Indian tribe, or by any other person) as the
15 otherwise-applicable requirement would have been
16 enforceable but for the agreement.

17 (6) NEW ENFORCEABLE REQUIREMENT DE-
18 RIVED FROM OR IMPOSED UNDER CURRENT LAW.—
19 An enforceable requirement that does not modify,
20 waive, or replace a requirement shall be enforceable
21 in the same manner and to the same extent as a
22 permit, condition, or requirement under the statute
23 or rule from or under which the enforceable require-
24 ment derives or is imposed.

1 (7) ENFORCEABLE REQUIREMENT THAT DOES
2 NOT MODIFY, WAIVE, OR REPLACE ANOTHER RE-
3 QUIREMENT.—If an enforceable requirement does
4 not derive from or is not imposed under any statu-
5 tory or regulatory provision, the agreement shall
6 specify the statute under which the enforceable re-
7 quirement shall be deemed to be imposed for pur-
8 poses of enforcement and shall be enforceable (by
9 the United States, a State, Indian tribe, and by
10 other persons) in the same manner and to the same
11 extent as a permit, condition, or requirement under
12 that statute or regulation.

13 (8) EMERGENCY OR IMMINENT HAZARD AU-
14 THORITY.—Nothing in this Act limits or affects the
15 Administrator’s emergency or imminent hazard au-
16 thorities.

17 (c) SPECIFICATION OF AFFECTED REQUIRE-
18 MENTS.—

19 (1) IN GENERAL.—When the Administrator ap-
20 proves an innovative environmental strategy agree-
21 ment under subsection (a), the Administrator shall
22 specify in the agreement each rule, requirement, pol-
23 icy, or practice that is modified or waived by the in-
24 novative agreement.

1 (2) NO MODIFICATION OR WAIVER.—Each rule,
2 requirement, policy, or practice not specified pursu-
3 ant to the preceding sentence is not modified and
4 waived.

5 (d) TERMINATION OR MODIFICATION OF AGREE-
6 MENT.—

7 (1) IN GENERAL.—The Administrator may ter-
8 minate or modify an innovative environmental strat-
9 egy agreement if the Administrator determines
10 that—

11 (A) the strategy fails or will fail to achieve
12 the better environmental results identified pur-
13 suant to section 7;

14 (B) better environmental results are no
15 longer being achieved by the strategy by reason
16 of the enactment of a new provision of law or
17 promulgation of a new regulation;

18 (C) there has been noncompliance with the
19 terms of the agreement (including a voluntary
20 commitment);

21 (D) there has been a change or transfer in
22 ownership or operational control of the facility
23 to which the agreement relates, or a material
24 change, alteration, or addition to the facility; or

1 (E) any other event specified in the agree-
2 ment as a ground for termination or modifica-
3 tion has occurred.

4 (2) EFFECT.—On termination of an innovative
5 environmental strategy agreement, the owner or op-
6 erator of the facility to which the agreement related
7 shall immediately become subject to each otherwise-
8 applicable requirement (as defined in subsection
9 (b)).

10 (e) TERM OF AGREEMENT.—

11 (1) IN GENERAL.—The term of an innovative
12 environmental strategy agreement shall not exceed 5
13 years, unless the Administrator determines, after
14 considering the views of the stakeholders, that—

15 (A) a longer period of time is required—

16 (i) to achieve the better environmental
17 results identified under section 7; or

18 (ii) in a case in which a proponent is
19 making a substantial investment in reli-
20 ance on the agreement, to ensure a reason-
21 able degree of confidence that the invest-
22 ment will be recovered; and

23 (B) the requirements of section 7 continue
24 to be met.

1 (2) EXTENSION OR RENEWAL.—In consultation
2 with the stakeholders and with the concurrence of
3 the signatories to the agreement and after public no-
4 tice and opportunity for comment consistent with
5 section 8, the Administrator may extend or renew an
6 agreement for an additional term or terms, but the
7 Administrator may not extend or renew an agree-
8 ment if the extension or renewal would not further
9 the purposes of this Act or the strategy would no
10 longer meet the requirements of section 7.

11 **SEC. 11. JUDICIAL REVIEW.**

12 (a) FAILURE TO PERFORM NONDISCRETIONARY ACT
13 OR DUTY.—

14 (1) IN GENERAL.—Any person may commence
15 a civil action in the United States District Court for
16 the District of Columbia against the Administrator
17 for failure to perform an act or duty under this Act
18 that is not discretionary with the Administrator.

19 (2) TIMING.—No action may be commenced
20 under subsection (a) before the date that is 60 days
21 after the date on which the plaintiff gives notice to
22 the Administrator of the act or duty that the Ad-
23 ministrator has failed to perform and of the intent
24 of the plaintiff to commence the action.

25 (b) DECISION TO ENTER INTO AGREEMENT.—

1 (1) IN GENERAL.—A person other than a signa-
2 tory to an innovative environmental strategy agree-
3 ment may seek judicial review of a decision by the
4 Administrator to enter into such an agreement in
5 accordance with chapter 7 of title 5, United States
6 Code.

7 (2) APPEAL.—A petition on appeal of a judg-
8 ment in a civil action under this subsection shall be
9 filed in the United States Court of Appeals for the
10 District of Columbia Circuit not later than 90 days
11 after the date on which public notice of the decision
12 to enter into the agreement is published under sec-
13 tion 8(b).

14 (c) NO JUDICIAL REVIEW OF OR RECORD JUSTIFICA-
15 TION FOR DECISION NOT TO ENTER INTO AGREE-
16 MENT.—A decision not to enter into, modify, renew, or
17 enter into negotiations toward an innovative environ-
18 mental strategy agreement and decisions under section 6
19 regarding the stakeholder process shall not be subject to
20 judicial review and shall not require record justification
21 by the Administrator.

22 **SEC. 12. LIMITATION ON NUMBER OF AGREEMENTS.**

23 (a) IN GENERAL.—The Administrator shall not enter
24 into more than 50 innovative environmental strategy
25 agreements unless, in the Administrator’s sole discretion,

1 and taking into account the full range of the agency's obli-
2 gations, the Administrator determines that adequate re-
3 sources exist to enter into a greater number of agree-
4 ments.

5 (b) LIMIT.—The Administrator, in the Administra-
6 tor's sole discretion, may limit the number of agreements
7 to less than 50.

8 (c) PRIORITY CONSIDERATION DIVERSITY.—The Ad-
9 ministrator shall—

10 (1) give priority consideration to proposals from
11 small businesses; and

12 (2) seek to ensure that the agreements entered
13 into reflect proposals from a diversity of industrial
14 sectors, particularly from sectors where there is sig-
15 nificant potential for environmental improvement.

16 **SEC. 13. SMALL BUSINESS PROPOSALS.**

17 The Administrator shall establish a program to facili-
18 tate development of proposals for innovative environ-
19 mental strategies from small businesses and groups of
20 small businesses and to provide for expedited and tailored
21 review of such proposals.

22 **SEC. 14. SAVINGS CLAUSE.**

23 (a) EFFECT OF DECISIONS BY THE ADMINIS-
24 TRATOR.—A decision by the Administrator to enter into
25 an agreement under this Act shall not affect the validity

1 or applicability of any rule, requirement, policy, or prac-
2 tice, that is modified or waived in the agreement with re-
3 spect to any facility other than the facility that is subject
4 to the agreement.

5 (b) OTHER AGREEMENTS.—Nothing in this Act af-
6 fects the authority of the Administrator in existence on
7 the date of enactment of this Act to enter into or carry
8 out agreements providing for innovative environmental
9 strategies or affects any other existing authority under
10 which the Administrator may undertake innovative initia-
11 tives.

12 (c) OTHER FEDERAL AGENCIES.—Nothing in this
13 Act affects the regulatory or enforcement authority of any
14 other Federal agency under the laws implemented by the
15 Federal agency except to the extent provided in an agree-
16 ment to which the other Federal agency is a party.

17 (d) LIMITS ON PURPOSES AND USES OF AGREE-
18 MENTS.—An agreement under this Act—

19 (1) may not be adopted for the purpose of cur-
20 ring or addressing past or ongoing violations or non-
21 compliance at a participating facility;

22 (2) may not be used as a legal or equitable de-
23 fense by any party or facility not party to the agree-
24 ment, or by a party to the agreement as a defense

1 in an action unrelated to any requirement imposed
2 under the agreement;

3 (3) shall not limit or affect the Administrator's
4 authority to issue new generally applicable regula-
5 tions or to apply regulations to the facility that is
6 the subject of the agreement;

7 (4) shall not give rise to any claim for damages
8 or compensation in the event of a change in statutes
9 or regulations applicable to such facility; and

10 (5) shall not be admissible for any purpose in
11 any judicial proceeding other than a proceeding to
12 challenge, defend, or enforce the agreement.

13 (e) APPLICABLE LAW.—

14 (1) CONTRACT LAW.—An innovative environ-
15 mental strategy agreement—

16 (A) shall not be interpreted or applied ac-
17 cording to contract law principles; and

18 (B) shall not be subject to contract or
19 other common law defenses.

20 (2) OSHA.—For purposes of section 4(b)(1) of
21 the Occupational Safety and Health Act of 1970 (29
22 U.S.C. 653(b)(1)), the exercise by the Administrator
23 of any authority under this Act shall not be deemed
24 to constitute or exercise of authority to prescribe or

1 enforce a standard or regulation affecting occupa-
2 tional safety or health.

3 **SEC. 15. EVALUATION AND REPORT.**

4 (a) EVALUATION.—The Administrator shall establish
5 an ongoing process with public participation to—

6 (1) evaluate lessons learned from innovative en-
7 vironmental strategies; and

8 (2) determine whether the approaches embodied
9 in an innovative environmental strategy should be
10 proposed for incorporation in an agency rule.

11 (b) REPORTS.—

12 (1) INDIVIDUAL STRATEGIES.—Not later than
13 18 months after entering into an innovative environ-
14 mental strategy agreement, the Administrator shall
15 submit to Congress a report evaluating whether the
16 approaches embodied in an innovative environmental
17 strategy should be proposed for incorporation in a
18 statute or a regulation.

19 (2) AGGREGATE EFFECT.—Not later than 3
20 years after the date of enactment of this Act, the
21 Administrator shall submit to Congress a report on
22 the aggregate effect of the innovative environmental
23 strategy agreements entered into under this Act, in-
24 cluding—

1 (A) the number and characteristics of the
2 agreements;

3 (B) estimates of the environmental and
4 public health benefits, including any reductions
5 in quantities or types of emissions and wastes
6 generated;

7 (C) estimates of the effect on compliance
8 costs;

9 (D) the degree and nature of public par-
10 ticipation and accountability;

11 (E) estimates of nonenvironmental benefits
12 obtained;

13 (F) conclusions on the functioning of the
14 stakeholder participation process; and

15 (G) a comparison of effectiveness of the
16 program relative to comparable State programs,
17 using comparable performance measures.

18 **SEC. 16. IMPLEMENTATION AUTHORITY.**

19 The Administrator may issue such regulations as are
20 necessary to carry out the agency's functions under this
21 Act.

22 **SEC. 17. TECHNICAL ASSISTANCE GRANTS.**

23 The Administrator may establish a program to pro-
24 vide grants for technical assistance to stakeholder groups.

1 **SEC. 18. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the agen-
3 cy to carry out this Act \$4,000,000 for each of fiscal years
4 1999 through 2003 (including such sums as are necessary
5 to provide technical assistance to stakeholder groups).

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